

REPRESENTATIVES FOR PETITIONER: Bradley Hasler, Dentons Bingham Greenebaum, LLP

REPRESENTATIVES FOR RESPONDENT: Jess Reagan Gastineau, Office of Corporation Counsel

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                         |   |            |                        |
|-------------------------|---|------------|------------------------|
| College Park Club, Inc. | ) | Petitions: | 49-600-17-1-5-00614-19 |
|                         | ) |            | 49-600-16-1-5-01346-18 |
|                         | ) |            |                        |
| Petitioner,             | ) |            |                        |
|                         | ) |            |                        |
|                         | ) | Parcel:    | 6027008                |
| v.                      | ) |            |                        |
|                         | ) | County:    | Marion                 |
|                         | ) |            |                        |
| Marion County Assessor, | ) | Assessment |                        |
|                         | ) | Years:     | 2016 & 2017            |
| Respondent.             | ) |            |                        |

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**November 18, 2020**

**FINAL DETERMINATION**

1. The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

2. College Park Club, Inc., a homeowners’ association (“the association”), sought an exemption from property tax for an unimproved six acre parcel it bought for its residential development’s common area. Because the Association properly notified the Assessor under Ind. Code § 6-1.1-10-37.5, and the Assessor failed to respond, we find the subject property is 100% exempt for the years at issue.

## PROCEDURAL HISTORY

3. The Association filed a Form 130 for the subject property for the 2016 and 2017 assessment years under Ind. Code 6-1.1-15-1.1(a)(3) claiming it was improperly denied exemptions. After the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) did not issue a decision within the statutory timeframe, it appealed to the Board.
4. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on June 23, 2020. Neither she nor the Board inspected the subject property.
5. Martin Price, President of the Association, Tom Murray, lawyer for the Association, and Gabe Deaton, Director of Assessment for Marion County, were sworn as witnesses.
6. The parties offered the following exhibits:

|                          |   |
|--------------------------|---|
| Petitioner’s Exhibit 1:  | Subject Property 2018 Property Record Card  |
| Petitioner’s Exhibit 2:  | Parcel Deed Recorded July 2014  |
| Petitioner’s Exhibit 3:  | Notice of Special Board Meetings-June & July 2014   |
| Petitioner’s Exhibit 4:  | Association Board Minutes-Special Meeting- July 2014-Approving Purchase of Parcel   |
| Petitioner’s Exhibit 5:  | Plat with “Common Area” Noted-Recorded December 2017  |
| Petitioner’s Exhibit 6:  | September 2016 Assessor’s Letter to Association   |
| Petitioner’s Exhibit 7:  | Board Authorization to Buy Parcel   |
| Petitioner’s Exhibit 8:  | Email from Tom Murray to Assessor (Oct. 2016) with attachments (College Park Recorded Covenants, Bylaws, Amended Bylaws, Recorded Deed to Subject Property) |
| Petitioner’s Exhibit 9:  | Responses to Interrogatories by Respondent  |
| Petitioner’s Exhibit 10: | College Park 1968 Recorded Covenants-Original Copy <sup>1</sup>   |

Respondent’s Rebuttal Ex. 1: Subject Property 2016 Property Record Card

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<sup>1</sup> Price testified that this is the original copy of the Association’s recorded covenants and restrictions from 1968 but because it is an old copy and difficult to read, the Association typed up a new version for readability purposes.

## **OBJECTIONS**

7. The Assessor objected to a question posed to Martin Price about whether the Association's management company had received any response from the Assessor's office regarding the exemption on the grounds that it called for hearsay. We note that our procedural rules allow hearsay, provided that it is not the sole basis for our determination. Thus, we overrule the objection with this caveat.
  
8. The Association objected to a question to Martin Price about whether he believed that any time a homeowner's association bought property it became common area on the grounds that it called for a legal conclusion. We agree and sustain the objection.
  
9. The Assessor objected to Petitioner's Ex. 1, the subject property's 2018 property record cards arguing that the exhibit was misleading and not relevant because it was for a year not under appeal. The Assessor offered rebuttal evidence in the form of the subject's 2016 property record card. As the Association points out, the exhibit also contains information for the years under appeal. Thus, it is relevant. In addition, any potential to mislead has been cured by having the 2016 card in evidence. We overrule the objection and admit the exhibit.

## **BURDEN OF PROOF**

10. All tangible property in Indiana is subject to taxation. Ind. Code § 6-1.1-2-1. Because property tax exemptions relieve properties from bearing their fair share of the cost of government services, exemptions are to be strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer therefore always bears the burden of proving it is entitled to the exemption. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).

## FINDINGS OF FACT

11. College Park is a residential community consisting of 480 single-family homes, condominiums, and common areas. In its bylaws, the Association has designated the common areas for the exclusive use of the residents. The association is a nonprofit. It has governed the neighborhood since the development's creation in the 1960's. *Price testimony.*
12. The Association first recorded its bylaws, covenants, restrictions, and governing documents with the Marion County Recorder on May 23, 1968. These prohibit any improvements on the common areas which are held by the Association for the residents. It also recorded amended bylaws in 1994 and 2013 and amended plat restrictions in 2001. The 2013 bylaws included the homeowners' approval to levy a special assessment to buy the subject property for use as a common area. *Price testimony; Pet'r Ex. 8, 10.*
13. Prior to 2014, the Jewish Federation maintained the subject property as green space with no improvements. It was exempt from property tax with a religious exemption. The Association then bought the property from the Jewish Federation and recorded the deed with the Marion County Recorder on July 29, 2014. The Association continued to maintain the subject property as a common area for its residents. *Price testimony; Murray testimony; Pet'r Ex. 2.*
14. In the spring of 2016, the Association received a tax bill for the subject parcel. After some back and forth between the parties, the Assessor's office sent the Association a letter by email stating that the Assessor had learned that the parcel's ownership had changed, and that the new owners must submit an affidavit in accordance with Ind. Code § 6-1.1-11-4, to explain why the property continued to meet the statutory requirements for an exemption, and file a Change in Use Form. Otherwise the subject property's exemption would be suspended. *Price testimony; Murray testimony; Pet'r Ex. 6.*
15. The Association, by counsel, sent an email to the Assessor's office on October 14, 2016. It attached a number of documents to this email including a "Notice to Marion County

Assessor.” This document referenced the subject property by parcel number and address. It also indicated that the Association was claiming an exemption under Ind. Code § 6-1.1-10-37.5 and providing notice pursuant to Ind. Code § 6-1.1-10-37.5(d). The Assessor’s office did not respond to this email. *Murray testimony; Price testimony; Pet’r Exs. 6, 8.*

16. In 2017, the Assessor’s Office then directed the Association to have the parcel re-platted and to have the words “Common Area” written on the document. The Association did so and recorded the new plat in December 2017. Based on this new plat, the subject property received an exemption for 2018. *Price testimony; Pet’r Ex. 5.*

#### ANALYSIS

17. The Association claims an exemption for common areas under Ind. Code § 6-1.1-10-37.5. The statute states in pertinent part:

(a) As used in this section, “common area” means a parcel of land, including improvements, in a residential development that: (1) is legally reserved for the exclusive use and enjoyment of all lot owners, occupants, and their guests, regardless of whether a lot owner makes actual use of the land;

...

(d) Notwithstanding any other provision of this article, a common area is exempt from property taxation, provided that the common area easements and covenants restricting the use and conveyance of common areas to lot owners are recorded, and notice is provided, to the appropriate county or township assessor.

(e) A county or township assessor shall designate an area as a common area after: (1) receiving notice as provided in subsection (d); and (2) determining that the area is a common area.

(f) If a county or township assessor determines that the area is not a common area, or determines that the area fails to meet the requirements of subsection (d), then the county or township assessor shall send a written statement to the owner of the common area not later than thirty (30) days after receiving the notice under subsection (d). The written statement shall contain: (1) the specific provisions on which the county or township assessor based the determination; and (2) a statement that the owner of the common area shall have thirty (30) days to address the specific provisions provided in

subdivision (1), and to establish the area as a common area that meets the requirements of subsection (d).

(g) If a county or township assessor fails to send a written statement to the owner of a common area as required by this section, then the area for which notice was provided in subsection (d) shall be considered a common area for purposes of this section.

(h) Once an area has been designated a common area, no subsequent refile of a common area property tax exemption is required unless an area designated as a common area subsequently fails to meet the definition of a common area as provided in this section.

18. The statute creates an informal process specific to common areas in a residential development which requires only that the taxpayer “notify” an assessor of the recorded common area property rather than file an application form as other exemptions require. It also mandates that the Assessor respond within 30 days once “notified.”
19. The Association argues that its October 14, 2016 email was sufficient notice to the Assessor. Thus, when the Assessor failed to respond, the subject property became exempt by default. We agree that the 2016 notice met the requirements of subsection (d) because it specifically referenced both the subject property and the statute. But the Assessor claims that a property can only receive an exemption under subsection (g) if it also meets the requirements of (a)(1) and (d), i.e. that the common area is legally reserved for the residents and the easements and covenants restricting use and conveyance are recorded.
20. This interpretation is incorrect because it would render the default provision of subsection (g) meaningless. The statute clearly shows the legislature’s intent to provide homeowner’s associations some repose if an assessor fails to respond to a notice given under subsection (d). The Assessor’s interpretation eliminates that repose. In addition, we note that subsection (f) provides that an association may cure any deficiencies in the legal status of the common area or the recording of the restrictions within 30 days of receiving a denial from the assessor. The facts of this case show that the Association was clearly trying to follow the law. If the Assessor had responded to the Association’s

notice as required by subsection (f), the Association would then have had an opportunity to cure any deficiencies, and presumably would have done so. Were we to adopt the Assessor's interpretation, the Assessor's failure to respond as required by the statute would have removed the Association's opportunity to cure. This cannot have been the intent of the legislature.

21. Because the Association provided sufficient notice under subsection (d), and the Assessor failed to timely respond, we find the subject property is entitled to an exemption under Ind. Code § 6-1.1-10-37.5(g) for the 2016 assessment year. In addition, because subsection (h) provides that an exemption carries forward without the need for any additional action by a homeowner's association, we find the subject property is exempt for the 2017 assessment year.

#### **CONCLUSION**

22. The subject property is 100% exemption from taxation for the 2016 and 2017 assessment years.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.